



U.S. Department of Agriculture

Rural Development

Rural Housing Service

Loss Mitigation Guide

Single-Family Housing Guaranteed Loans

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SERVICING EARLY DELINQUENCY LOANS (LESS THAN 90 DAYS PAST DUE)

The purpose of all collection efforts is to bring a delinquent mortgage current in as short a time as possible. RHS policy as stated in 7 CFR §1980.371 describes minimum servicing requirements to accomplish this objective. The majority of one or two payment delinquencies will be addressed by either voluntary reinstatement by mortgagors, or through traditional collection methods outlined in 7 CFR §1980.371, including informal forbearance plans, and deeds-in-lieu of foreclosure.

While a loss mitigation program is designed to address serious defaults, any reasonable lender efforts to cure loans that are past due for 90 days or more contribute to the RHS goal of helping residents in rural areas keep ownership of their homes and reduce the Agency's losses. Thus, effective loss mitigation begins in the early stages of servicing defaulted loans.

A. Early Intervention	<p>To facilitate a successful loss mitigation intervention, the delinquent borrower must be contacted if the payment is not received by the 20th day after it is due (7 CFR 1980.371(a)).</p> <p>The sooner the lender makes contact with the delinquent borrower and identifies the cause of the default, the more likely it is that the default will be cured and the mortgagor will be able to keep the home. It is critical that the lender make all decisions in a manner consistent with fair housing and lending principles.</p>
B. Cause of Default	<p>The lender should identify the underlying cause of the delinquency at the earliest stage of borrower contact and determine if the problem is permanent or temporary. A borrower whose ability to support the mortgage debt has been permanently reduced through death, divorce, or permanent disability is unlikely to cure the default through a repayment plan. Such a borrower should be considered for either a loan modification, which might permanently reduce the mortgage payment, or a pre-foreclosure sale, which allows a transition to more affordable housing. In some cases, a loan modification might result in higher mortgage payments as a result of capitalizing the arrearage. This option may be feasible if the borrower's financial situation will accommodate a higher payment.</p> <p>A borrower who needs credit, legal, or employment assistance to resolve temporary financial problems should be referred to housing counseling as soon as possible.</p>
C. Default Counseling	<p>A borrower who receives early counseling is much more likely to bring the loan current. Lenders are strongly encouraged to recommend counseling to borrowers and establish working relationships with counseling agencies. Among the documents the lender should provide to the borrower before the end of the second month of delinquency is HUD publication PA 426-H, <i>How to Avoid Foreclosure</i>, rev May 2001. This may not be feasible, however, if the borrower has filed a bankruptcy petition and, in the opinion of the lender's legal counsel, providing a copy of the pamphlet would be a violation of the bankruptcy stay. In such cases, the lender should keep documentation of this fact in the servicing file.</p>
D. Informal Forbearance Plans	<p>An example of an informal forbearance plan is a verbal repayment agreement lasting for 3 months or less. Such a plan is the first and best means to ensure that a one or two month delinquency does not escalate beyond the mortgagor's ability to cure. In such a plan, the lender should carefully review the borrower's financial situation and arrange payment terms that the borrower realistically can keep until the delinquency can be cured.</p>

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E. Sale of the Property	A borrower who does not have either the ability or willingness to cure the delinquent loan, but who has sufficient equity to sell the property and repay the arrearage from the sale proceeds, should be encouraged and assisted in doing so. This assistance may include a written agreement that provides a short-term reduction or suspension of payments pending the closing of a sale. In such a case, the delinquency will be cured at the closing of the sale. The lender has full responsibility in assisting the borrower in such a case
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LOSS MITIGATION OVERVIEW

RHS lenders have the authority and the responsibility to use effective actions and strategies to assist borrowers in default retain their homes, and thus reduce losses to the Agency and the lender. Because of its ongoing relationship with the delinquent borrower, the lender is in the best position to determine which, if any, loss mitigation strategies are appropriate in a given circumstance. A lender may use any of the loss mitigation options described below.

Lender's Loss Mitigation Actions	<p>The lender should:</p> <ul style="list-style-type: none"> • consider all reasonable means to address the delinquency at the earliest possible moment • use payment or credit scoring tools, if available, to identify high risk borrowers that may need more attention, rather than wait until standard contact dates • inform the borrower(s) of available loss mitigation options and the availability of housing counseling before the end of the second month of delinquency <i>(Ensuring that the borrower receives the HUD publication PA 426-H concerning foreclosure avoidance is acceptable, as well as documentation in the servicing and collection notes of conversations with the borrower concerning mitigation options.)</i> • evaluate each delinquent loan no later than the 90th day of delinquency to determine which loss mitigation option is appropriate • use loss mitigation whenever feasible to avoid foreclosure • reevaluate each delinquent loan monthly until current or foreclosed • report loss mitigation actions through monthly default status reporting using EDI status of mortgage code values • initiate foreclosure within six months of default unless a loss mitigation option is being pursued aggressively, and ensure that all actions taken are documented • retain a complete audit trail showing all loss mitigation actions
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GENERAL

Both lenders and borrowers have responsibilities under loss mitigation. While each option involves specific actions, some policies apply to all of the options, and some lender actions are performed whether or not any of the loss mitigation strategies are used. This section describes the general policies, recommended procedures, and minimum actions that constitute effective loss mitigation techniques.

A. Default Status of the Loan	<p>Loss mitigation options are intended to provide relief for a borrower who is delinquent. That is, a borrower who has failed to perform under any covenant of the mortgage or deed of trust for 30 days or more. If the borrower's circumstances warrant, the lender may make servicing options such as a special forbearance agreement or a loan modification available to a borrower whose failure to perform is likely to continue. If the cause of the delinquency is incurable, a disposition option such as a pre-foreclosure sale or a deed-in lieu of foreclosure is recommended immediately because the borrower has no realistic opportunity to replace the lost income or reduce expenses sufficiently to meet the loan obligation through other options.</p> <p>Any attempt to deliberately manufacture or misrepresent pertinent facts about a borrower's financial or other qualifying status may disqualify the borrower from participating in loss mitigation options and result in civil or criminal penalties. If perpetrated by a lender, such actions may lead to administrative and/or judicial penalties against the lender.</p>
B. Owner Occupancy	<p>Generally, the borrower's eligibility for any of the reinstatement, special forbearance, or loan modification options should be based on occupancy of the property as a principal residence. A lender must receive RHS's concurrence to make an exception for a nonoccupant borrower who is seeking relief through pre-foreclosure sale (PFS), or deed-in-lieu of foreclosure (DIL) when it is clear that the subject property was not purchased as a rental investment or used as a rental for more than 12 months. The lender keeps the documents justifying such an exception in the servicing file.</p>
C. Other Eligibility Factors	<p>The following general eligibility restrictions apply in all cases:</p> <p>A borrower who has a bankruptcy petition pending is not likely to be able to participate in any loss mitigation option. A borrower who has had a bankruptcy discharged or dismissed may be considered for loss mitigation options.</p> <p>A loan secured by an abandoned property is not eligible for a reinstatement option. However, a disposition option may be used after RHS approves it when the property has been recently vacated by circumstances related to the default that are beyond the borrower's control, such as a job transfer or death. The lender sends thorough documentation of such circumstances to RHS and keeps related notes in the servicing file.</p>

D. 90 Day Review	<p>The lender evaluates each delinquent RHS loan that it services when monthly installments are due and unpaid for 91 days, and considers all loss mitigation techniques to determine which, if any, are appropriate. To meet this evaluation requirement, the lender's early involvement in the delinquency is demonstrated by contact with the borrower to gather sufficient information about the borrower's circumstances, intentions, and financial condition. This is especially important in light of the borrower's possible reluctance to discuss financial difficulties. While the lender cannot be responsible if a borrower fails to respond to repeated contacts, the lender must clearly document aggressive efforts to reach the borrower within 90 days of the default.</p>
Curable default	<p>When the cause of the delinquency is curable and the borrower is committed to remaining in the home, the lender should consider reinstatement options in this order:</p> <ul style="list-style-type: none"> • special forbearance • loan modification
Noncurable default	<p>When the cause of the delinquency is not curable and/or the borrower is not committed to remaining in the home, the lender should consider disposition options in this order:</p> <ul style="list-style-type: none"> • pre-foreclosure sale • deed-in-lieu of foreclosure
E. Option Priority	<p>Generally, a special forbearance is the best option before considering a loan modification. However, there may be a situation where a loan modification is clearly the best option, especially when the reduction of the interest rate yields a sizable reduction of the mortgagor's monthly payment. In such a case, a modification will be preferred over special forbearance. Similarly, a pre-foreclosure sale is preferable to a deed in lieu of foreclosure. In most cases the mortgagor is expected to attempt to sell the home before the lender accepts a deed in lieu of foreclosure. In any case, the lender documents the reasons why a specific loss mitigation option is chosen.</p>
F. Monthly Evaluation	<p>As long as the account remains delinquent, the lender reevaluates the status of each loan each month following the 90-day review, and maintains documentation of the evaluations in its servicing or collection systems. The evaluation may be as simple as notes in the collection system that the mortgagor's payments under special forbearance are made as agreed. Reports generated by servicing systems that track repayment plans are adequate for documentation purposes.</p>

G. Evaluating the Borrower's Financial Condition	<p>For any loss mitigation option, the lender should obtain detailed financial information from the borrower. The lender may ask the borrower to give this information on a form of its choice that collects the data elements similar to those shown on Form HUD-92068 F, <i>Request for Financial Information</i>. If the borrower is cooperative, the information may be taken during a telephone interview provided that it is a complete picture of the borrower's financial information. Regardless of how the financial information is secured, the lender should independently verify it by obtaining a credit report, and any other forms of verification the lender deems appropriate.</p> <p>Once a lender has the borrower's complete financial information, it should analyze the borrower's current and future ability to meet the monthly mortgage obligation by estimating the borrower's assets and surplus income as follows.</p> <ul style="list-style-type: none"> • Estimate the borrower's anticipated monthly net income for the same period, making necessary adjustments for income fluctuations. • Estimate the borrower's normal monthly living expenses (food, utilities, etc.) including debt service on the mortgage and other scheduled obligations. Make adjustments necessary to reflect increased or decreased expenses for each month of the proposed special forbearance agreement, or in the case of all other options, for a minimum of three months. • Subtract expenses from income to determine the amount of surplus income available each month. • Divide surplus income by total monthly expenses to determine the surplus income percentage. <p>The lender must use good business judgment to ensure that the workout option selected reasonably reflects the borrower's ability to pay. A borrower with sufficient surplus income or other assets is asked to cure the debt through a repayment option.</p>
Ineligible Borrower	<p>If the borrower is not eligible for any loss mitigation alternative based on information secured from the borrower in a telephone interview, the lender should advise the borrower of the reason(s) and allow the borrower at least seven calendar days to submit additional information that might have an impact upon the lender's evaluation. The lender will retain the financial analysis and supporting documentation and make it available for compliance reviews. Collection actions may continue.</p>
H. Combined Options	<p>Loss mitigation options may be used alone or in combination to resolve an existing default. There are some limitations, however:</p> <ul style="list-style-type: none"> • Special forbearance may be combined with a loan modification. The combination of options is sequential, not simultaneous. • Pre-foreclosure sale may be combined with a deed-in-lieu provision in case the property does not sell within the time required. • A lender may combine a special forbearance plan with a loan modification when there is any doubt about a borrower's long term income stability. To reduce the risk of a workout failure, the borrower can demonstrate the ability to support the debt by making at least three full monthly payments before executing a modification. Special forbearance is recommended if there are attorney fees and loan modification costs since they cannot be capitalized.
I. Foreclosure	<p>The lender should have considered all feasible loss mitigation options before initiating foreclosure. The lender must document all of the options it considered and retain such information for RHS review. If the borrower has abandoned the property, loss mitigation is not an option before initiating the foreclosure.</p>

J. Time to Initiate Action	<p>A lender uses one of the loss mitigation options or initiates foreclosure within six months of the date of default. This requirement is considered satisfied if any of the following actions has occurred within the six-month period:</p> <ul style="list-style-type: none"> • the loan is brought current or paid off • the borrower executes a special forbearance agreement • the loan is modified • the borrower executes a pre-foreclosure sale agreement • the borrower executes a deed-in-lieu of foreclosure • the lender initiates the first legal action to begin foreclosure
Lender Reporting	The lender reports these actions in the month they occur or, if after the monthly cut-off date, in the next reporting cycle using the appropriate EDI status code.
K. Extension Requests	<p>If the lender initiated a special forbearance or loan modification but is unable to complete it, the lender may request approval from RHS to extend the timeframe to initiate foreclosure provided the loss mitigation option was begun prior to the timeframe that foreclosure was to be initiated. To qualify for the extension, the lender provides evidence that it analyzed the borrower's complete financial situation and evaluated the appropriate loss mitigation options. In addition, the lender reports the loss mitigation initiative using the appropriate EDI status code in the monthly default status report.</p> <p>The lender may request an extension from RHS for completing a deed-in-lieu of foreclosure. If the lender attempts a repayment plan (not special forbearance), the lender may request an extension before the timeframe to initiate foreclosure expires and explains why an extension is necessary.</p>
L. Option Failure	<p>A foreclosure action may be suspended during special forbearance sale periods. If this option fails, the lender may either commence or recommence foreclosure, or initiate another loss mitigation option. Failure occurs when:</p> <ul style="list-style-type: none"> • the mortgagor does not perform under the terms of a written special forbearance agreement for 60 days. or • there is no signed contract of sale within 3 months of a pre-foreclosure sale agreement; or if there is a signed contract of sale, settlement has not occurred within 6 months of the agreement; or the mortgagor notifies the lender of withdrawal from the agreement; or the lender notifies the mortgagor in writing that it has terminated the agreement.
M. Documentation	<p>For each claim, the lender should maintain evidence in its servicing notes and collection history systems of its compliance with loss mitigation guidelines as well as supporting documentation including all communications with any RHS office. The lender's servicing notes and collection history systems also contain evidence of compliance with counseling and other actions on loans that do not result in a claim.</p>

N. Servicing Plan	Under 7 C.F.R. §1980.374(d), the lender must submit a servicing plan to RHS when a loan is 90 days delinquent and a method other than foreclosure is recommended to resolve the delinquency. The form in Appendix 1 should be used to communicate servicing plan data to RHS.
O. Option Checklists	The checklists in Appendices 2-5 show the most important actions for each loss mitigation option. Their use is optional and need not be submitted with the servicing plan submitted to RHS.

SPECIAL FORBEARANCE

A special forbearance is a written repayment plan between a lender and a mortgagor that results in a current loan that has been delinquent for at least 90 days. The agreement provides the mortgagor with relief not typically afforded under an informal forbearance plan. Examples of provisions in a special forbearance agreement include a repayment term of four or more months; suspending or reducing payments for one or more months to allow the borrower to recover from the cause of default; or an agreement to allow the borrower to resume making full monthly payments while delaying repayment of the arrearage.

At no time does the maximum arrearage under a special forbearance plan exceed the equivalent of 12 months of principal, interest, taxes and insurance ("P-I-T-I").

A special forbearance plan is structured so that it leads to a current loan, either by gradually increasing monthly payments in an amount sufficient to repay the arrearage over time, or through resumption of normal payments for a period (generally three or more months) followed by a loan modification.

A. Defaulted Loan	The loan is a minimum of 3 payments but not more than 12 payments delinquent, and is not in foreclosure when a special forbearance agreement is executed. A loan that had previously been referred to foreclosure may be removed from foreclosure status after executing a special forbearance. The lender suspends foreclosure, on advice of its legal counsel, subject to the borrower's performance under the terms of the special forbearance agreement, if the suspension is stated in writing in the agreement.
B. Borrower Qualifications	Special forbearance may be offered to a borrower who has recently experienced a verified loss of income or an increase in living expenses, but who has or will have sufficient monthly income to correct the delinquency within the duration of the special forbearance plan. This may be accomplished by either a gradual repayment, or a combination of repayment and loan modification. Such a borrower should be the owner-occupant of the property securing the RHS loan and committed to occupying the property as a primary residence during the term of the special forbearance agreement. Special forbearance may be used to bring the loan current to facilitate the eventual sale of the property.
C. Property Condition	<p>The lender verifies that the property has no physical conditions that adversely impact either the borrower's continued use or ability to support the debt. A borrower will not be able to support payments under a special forbearance plan if the property is in such a deteriorated condition that repairs will drain the borrower's monthly resources. The analysis of the borrower's surplus income should consider obvious property maintenance expenses.</p> <p>The use of good business judgment is imperative. If significant deferred maintenance is a contributing cause of the default, it may be appropriate to provide a period of mortgage forbearance during which specified repairs are completed at the borrower's expense. If the property is in extremely poor physical condition, a special forbearance plan that allows a reduction or suspension of payments without a requirement to repair the property may not offer a permanent solution.</p>

D. Financial Analysis	<p>The lender determines that the borrower has the capacity to resume full monthly payments and bring the loan current under the terms of a forbearance plan. The lender does this by projecting the borrower's surplus monthly income for the duration of the special forbearance period. The proposed repayment terms are consistent with the borrower's ability to pay.</p> <p>If the lender's financial analysis determines that the borrower either does not, or will not, have the ability to resume full monthly payments in the foreseeable future, special forbearance should not be used. The lender should then consider other loss mitigation options.</p>
E. Combining Options	<p>Special forbearance may either be used alone or be combined with a loan modification. For example, if a borrower is expected to recover from the cause of the default and resume making full monthly payments, but will not have adequate surplus income to repay the arrearage, the lender may establish a special forbearance agreement. Such an agreement allows the borrower to demonstrate recovery from the financial problem by making 3 or 4 full mortgage payments for a period, after which the delinquent amount is either capitalized into a modified loan, or paid off through a promissory note.</p>
F. Documentation	<p>The mortgagor and lender execute a written agreement that clearly defines the term, frequency of payments, and amounts due under the forbearance plan. The agreement acknowledges previously missed mortgage payments and states that failure to comply with its terms can result in foreclosure. There is no maximum length for a special forbearance agreement and the lender may allow as much time as is reasonable based on the borrower's repayment ability.</p> <p>An acceptable agreement should:</p> <ul style="list-style-type: none"> • provide the borrower with relief not available under an informal forbearance plan • bring the loan current, unless it is combined with a mortgage modification • not at any time allow the total arrearage amount to exceed the equivalent of 12 P-I-T-I payments • not allow late fees to be charged while the mortgagor is performing under the terms of a special forbearance plan • allow reasonable foreclosure costs and late fees accrued before the special forbearance agreement is executed to be included as part of the repayment schedule. However such costs and late fees are collected only after payment of all principal, interest, and escrow advances. The loan is never considered delinquent only because the borrower has not paid late fees or other foreclosure costs. <p>If the special forbearance plan results in a modification, foreclosure costs and fees are collected only in accordance with the requirements applicable to that option.</p>
G. Review and Renegotiation	<p>The lender reviews the status of a forbearance plan each month and takes appropriate action if the borrower is not complying with the terms of the plan. A plan may be renegotiated if the borrower's financial circumstances change; however, under a renegotiated plan, the loan should not be more than 12 months delinquent.</p>

LOAN MODIFICATION

A loan modification is a permanent change in one or more of the terms of a loan that results in a payment the borrower can afford and allows the loan to be brought current. Modifications may include a change in the interest rate; capitalization of delinquent principal, interest or escrow items; and/or reamortization of the balance due.

A modification may be appropriate for a borrower who has experienced a permanent or long-term reduction in income or an increase in expenses, or who has recovered from the cause of the default but does not have sufficient surplus income to repay the arrearage through a repayment plan. To qualify for a modification, the borrower has a documented ability to support the monthly mortgage debt after the terms of the loan are modified.

Not all loans are appropriate for modification. Loans that best support modification include: those with above market interest rates; lower loan to value ratios; and/or mature terms (i.e., paid down ten years or more). The modification is valuable when the arrearage can be capitalized into the loan balance and/or the interest rate is reduced to the current market rate so that the borrower can better afford the resulting monthly payment.

A. Loan Delinquency	<p>To modify a defaulted note under loss mitigation:</p> <ul style="list-style-type: none"> • Generally, three or more full monthly payments are due and unpaid. • At least 12 months have elapsed since the origination date of the loan. • The loan is not in foreclosure at the time the modification is executed; however, a loan removed from foreclosure status may be modified. • The default is due to a verified loss of income or increase in living expenses. <p>Note: The lender may, at its discretion, modify a loan that is not delinquent but is in imminent danger of default; i.e. will soon become delinquent due to known circumstances.</p>
B. Borrower Qualifications	<p>A modification may be offered to a borrower who has stable surplus income, which, while not sufficient to repay the original loan and the arrearage, is sufficient to support the monthly payments under the modified rate.</p> <p>The borrower should be the owner-occupant who is committed to occupying the property as a primary residence. A modification should not be used to bring a loan current before a sale or assumption.</p>
C. Property Condition	<p>While the modification option does not have a loan-to-value restriction, and an appraisal or broker's price opinion is not required, the lender verifies through an inspection that the property has no physical conditions that adversely impact the borrower's continued use or ability to support the debt.</p> <p>A borrower may not be able to support payments under a modification if the property is in such a deteriorated condition that repairs will drain the borrower's monthly resources. An analysis of the borrower's surplus income should consider anticipated property maintenance expenses. If the property is in extremely poor physical condition, a modification may not offer a resolution of the default.</p> <p>Costs to complete needed repairs may not be capitalized as part of a modification agreement, and the borrower may not receive any cash as a result of the modification.</p>

D. Financial Analysis	The lender uses good business judgment to determine if the borrower has the capacity to repay the arrearage either through a repayment or special forbearance plan. The lender determines the borrower's financial condition and projects the borrower's surplus monthly income for a minimum of three months. The loan is not modified if the lender determines that the borrower does not have the ability to support the modified monthly payment.
E. Combining Options	A modification may be used alone, or as part of a repayment, or special forbearance agreement. If a borrower needs time to resolve the default, but will eventually be able to support the debt at the modified rate but not at the higher original rate, a modification may be included at the final step in a repayment plan or special forbearance. An existing repayment plan or special forbearance may also be converted to modification if the borrower's circumstances change.
F. Loan Modification Provisions	<p>The following apply to loan modifications:</p> <ul style="list-style-type: none"> the modification results in a fixed-rate fully amortizing loan, and the modification brings the loan current. <p>The lender may, at its discretion, reduce the note interest rate below the market rate if necessary to resolve the default. Discount fees associated with rate reductions are not reimbursable. All or a portion of the P-I-T-I arrearage (principal, interest, and escrow items) may be capitalized to the mortgage balance.</p> <p>Foreclosure costs, late fees and other administrative expenses may not be capitalized. The lender may collect the legal and administrative fees (resulting from the canceled foreclosure action), from the mortgagor either through a lump sum payment or through a repayment plan separate from, and subordinate to, the modification agreement.</p> <p>The modified principal balance may exceed the loan's original principal balance.</p> <p>The modified principal balance may exceed 100% loan-to-value.</p> <p>The lender may reamortize the total unpaid amount due over the remaining term of the mortgage.</p>
G. Lien Status	The lender ensures the first-lien status of the modified mortgage in compliance with any applicable state or Federal laws and regulations.
H. Documentation	The lender ensures that the modification documentation preserves the first lien status of the RHS-guaranteed loan. The lender will make a determination in accordance with state law as to whether it is necessary to record the modification agreement in order to maintain the first lien. Copies of executed, not recorded, modification agreements should be forwarded to the RHS state office.
I. Disclosures	The lender complies with any disclosure or notice requirements applicable under state or federal law.

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J. Failure	If the loan becomes delinquent following modification, it shall be treated as a new default and serviced accordingly. Since the lender maintains the first lien status of the loan subsequent to modification, any amount that is not in the first lien position is not guaranteed by RHS and is not subject to a claim. If the lender submits a claim, RHS reserves the right to request documentation (legal or otherwise) establishing the loan's first lien status.
K. Subsequent Use	If a loan has been modified or brought current within the previous three years, re-default risk is presumed to increase following a subsequent modification. Before granting a modification in this circumstance, the lender prepares a written justification, obtains RHS prior approval, and retains a copy along with supporting documents in the servicing file. A subsequent modification should be an unusual occurrence, and the cause of the second default should not be related to the original problem.
L. Loan Note Guarantee Terms	The terms of the RHS Loan Note Guarantee (LNG) do not change. The LNG is in effect only for 30 years from the date of the original loan. Any loss on the modified loan is limited to the lesser of either 90 percent of the original loan amount, or the sum of the first 35 percent of the loss and 85 percent of the balance of the loss.
Lender Reporting	<p>The lender reports these actions in the month they occur or, if after the monthly cut-off date, in the next reporting cycle using the appropriate EDI status code. In addition, the lender sends a copy of the executed loan modification to the RHS State Office within 60 days of execution. The agreement should contain the following key data elements:</p> <ul style="list-style-type: none"> • borrower and co-borrower name(s) and ID number(s) • effective reamortization date • unpaid principal reamortized • eligible interest and costs capitalized • sum of reamortized principal and capitalized interest and costs • interest rate • maturity date
RHS Action	The RHS State Office staff processes the reamortization transaction by means of the NITC, USDA Televue, GUARLOAN System Loan Servicing Menu.

PRE-FORECLOSURE SALE

The pre-foreclosure sale (“PFS”) option allows a borrower in default to sell his or her home and use the sale proceeds to satisfy the mortgage debt even if the proceeds are less than the amount owed. This option is appropriate for a borrower whose financial situation requires the sale of the home, but who is unable to do so because the value of the property has declined to less than the amount owed on the mortgage.

The borrower makes a commitment to actively market the property for a period of at least three months, during which time the lender delays foreclosure action. If the property does not sell, the borrower is encouraged to convey the property to the lender through a deed-in-lieu of foreclosure.

A borrower wishing to use the PFS option submits a request to the lender along with any financial information the lender requires. The lender obtains a recent market value appraisal and preliminary title report to determine the feasibility of the PFS. The lender notifies the borrower whether or not the request is approved.

A. Loan Default	The loan is in default (delinquent more than 30 days) at the time the pre-foreclosure sale is closed. A lender may exercise discretion to accept an application from a borrower who is facing imminent default, and if the loan will be in default by the time the pre-foreclosure sale is completed. The lender documents this decision in the servicing file. Under no circumstances shall PFS be available to borrowers who have abandoned their mortgage obligation despite their continued ability to pay.
B. Borrower Qualifications	<p>The PFS option may be extended to a borrower who:</p> <ul style="list-style-type: none"> • is in default due to a verified increase in living expenses or decrease in income • has negative equity of not more than 63 percent of the outstanding mortgage balance including unpaid principal and accrued interest (<i>PFS may be considered if the property’s appraised value slightly exceeds the mortgage payoff figure, but net proceeds, after deducting the costs of the sale, will fall short of the amount needed to discharge the mortgage by more than \$1,000.</i>) • occupies the property as a primary residence <p>A lender should obtain RHS prior approval for pre-foreclosure sales in cases of a non-occupant borrower when it is verified that the need to vacate is related to the cause of the default (job loss, transfer, divorce, death).</p>
C. Borrower’s Application	<p>A defaulted borrower who expresses interest in a pre-foreclosure sale should be sent a copy of the lender’s PFS criteria. Additionally, the lender is encouraged to proactively solicit participation by a borrower who is in default on an RHS-guaranteed first mortgage and who is unable to cure the default.</p> <p>By signing and returning the application with the required financial information, the borrower should acknowledge receipt of housing counseling, and agree to:</p> <ul style="list-style-type: none"> • list the property with a licensed real estate broker unrelated to the borrower. (<i>The listing agreement should include a specific cancellation clause in the event the terms of a sale are not acceptable.</i>) • make a good faith effort to aggressively market the property • perform all normal property maintenance and repairs until closing of the pre-foreclosure sale

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Pre-Foreclosure Sale**

D. Property Value	The lender obtains a standard market value appraisal from an appraiser who does not share any interest with the mortgagor or mortgagor's agent. The appraisal contains both "As Is" and "As Repaired" values for the property, and should be valid for six months. A copy of the appraisal is shared with the homeowner or sales agent, if requested. Appraisals or opinions of value provided by the borrower, or borrower's real estate agent are not acceptable. The lender reviews the appraisal and satisfies itself that the opinion represents the fair market value of the subject property. The original list price of the property must reflect its fair market value. The cost of the appraisal is reimbursable in the loss claim.
E. Property Condition	Properties that have sustained serious damage (from fire, flood, earthquake, tornado, etc.) should not be considered for PFS if the cost of repair exceeds 10 percent of the As Repaired appraised value. The lender may exercise discretion to accept or reject a damaged property when the repair costs are less than the 10 percent threshold, but should document the decision in the servicing file.
F. Condition of Title	The property has marketable title. The lender obtains a title search or preliminary title report to verify that the title is not impaired either with unresolvable title problems or junior liens that cannot be discharged. If the lender determines that junior liens and other title issues can be resolved, the borrower's PFS application may be approved and resolution of the title issues can be pursued concurrent with the marketing effort.
G. Financial Analysis	The lender determines the borrower's present and anticipated financial condition. The lender projects the borrower's surplus monthly income and uses good business judgment to determine whether the borrower is able to support the mortgage debt.
H. Timing of PFS Actions	<p>The lender either decides to allow a PFS, commences foreclosure, or initiates another loss mitigation option within six months of the date of default, unless the default is cured earlier.</p> <p>If the PFS follows a failed special forbearance agreement, the PFS, foreclosure or other option should be initiated within 90 days of the failure.</p>
I. Duration of the Pre-Foreclosure Sale Period	<p>The pre-foreclosure sale period should be three months beginning upon the lender's approval. The lender should review the marketing efforts with the mortgagor each month. After 90 days have passed without a scheduled closing, the lender should discuss the likelihood of a sale with the real estate broker and make a determination to either end the pre-foreclosure sale period, or, if a sale is likely, extend it for an additional 30 days. Documentation of this decision is retained in the servicing notes.</p> <p>If the property is under contract at the end of the marketing period, the lender may extend the PFS period for 60 days, not to exceed a total of 6 months.</p>
J. Other Lender Actions	The lender is responsible for inspection, protection, and preservation of the property between the 45th day of default and the date it approves the borrower's PFS request. Funds spent for preservation and protection may be reimbursed.

K. Early Termination	<p>The borrower's participation in the PFS option may be terminated at the lender's discretion, for any of the following reasons:</p> <ul style="list-style-type: none"> • unresolvable title problems • determination that the borrower is not acting in good faith to market the property • voluntary withdrawal by the borrower
L. Failure	<p>If a closing of an approved PFS has not occurred within 90 days of the expiration of the pre-foreclosure sale period (or 6 months of the date of default, whichever is later), the lender should commence foreclosure or obtain a deed-in-lieu of foreclosure. If the borrower's financial condition has improved significantly to the point that a cure of the delinquency is a viable option, the lender may undertake a special forbearance agreement or a loan modification. However, the lender should fully justify this decision in the claim review file, and complete the action within the 90-day period.</p>
M. Borrower Consideration	<p>A borrower who successfully sells the property securing the loan using the PFS option is relieved of the mortgage obligation. The borrower shall not be pursued for deficiency judgments by either the lender or RHS.</p>
N. Contract Approval	<p>Because time is of the essence when the PFS option is exercised, the lender should review the signed Contract for Sale within 5 calendar days. The transaction is an outright sale of the premises. No sale by assumption may be considered, regardless of provisions for release of liability.</p> <p>The lender may approve a sale contract in which the net sales proceeds are at least 82 percent of the home's "As-Is" appraised value. "Net Sales Proceeds" is defined as the contract price less:</p> <ul style="list-style-type: none"> • sales commission (usually 6% or less) • property repairs required by the appraisal • local/state transfer tax stamps and other customary closing costs including the seller's costs for a title search and title insurance <p>Examples of settlement costs which may not be included in the net sales proceeds calculation are:</p> <ul style="list-style-type: none"> • tax service fees and other property transfer costs normally paid by the buyer • home warranty fees • repairs not stipulated in the appraisal • survey costs • lawyer's fees for representing the seller (apart from conducting the settlement or review of documents) <p>There can be no hidden terms or special understandings between any of the parties involved in the transaction; i.e., the buyer, seller, appraiser, sales agent, closing agent, and lender.</p>

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O. Closing and Post Responsibilities	<p>Before the transaction closes, the lender will provide the closing agent with a list of all amounts payable out of the sale proceeds. Before giving final approval for a closing, the lender reviews the HUD-1 to ensure that it complies with earlier closing cost estimates.</p> <p>A pre-foreclosure sale is reported to national credit bureaus as a “short sale.” The lender is responsible for filing Form 1099-A with the IRS and reporting any discharge of indebtedness, in accordance with the Internal Revenue Code.</p>
P. Filing a Claim	<p>The loss claim under the loan note guarantee is submitted to RHS within 30 days after the date of the PFS closing. RHS will reimburse the lender for reasonable and customary costs of the appraisal, title search (if not included in the settlement statement), the allowable percentage of legal fees for a foreclosure postponed pending completion of PFS, if applicable, and reasonable costs of preservation and protection. Disbursements for taxes, assessments, hazard insurance, and other allowable items payable before the date of the PFS closing are also reimbursable. RHS will not pay costs related to the property incurred after the closing date.</p>

DEED IN LIEU OF FORECLOSURE

Deed-in-lieu of foreclosure (DIL) is a disposition option in which a borrower voluntarily deeds the collateral property to the lender in exchange for a release from all obligations under the mortgage. Although the borrower loses the property, a DIL is usually preferable to foreclosure because the cost and emotional trauma of foreclosure are reduced. Also, a DIL is generally less damaging than foreclosure to a borrower's ability to obtain credit in the future. RHS prefers a DIL because it avoids the time and expense of a legal foreclosure action, and the property is generally in better physical condition at acquisition due to the cooperative nature of the transaction.

Unlike a legal foreclosure however, the lender's acquisition of the property by a DIL does not extinguish junior liens or terminate tenancies. Therefore, the lender has a responsibility to determine that the condition of the property and the title meet minimum standards. The most significant is that the lender enters into a written agreement with the borrower, stating the specific actions the borrower will perform in order to take advantage of this option.

A. Loan Default	<p>Before accepting the deed conveying the property, the lender should document that the loan is in default (delinquent more than 30 days), and the cause of the default is incurable. A lender must request RHS prior approval to enter into a DIL agreement with a borrower whose loan is current but who is facing imminent default, and should document the decision in the servicing file. In such a case, the loan is in default at the time that the DIL is recorded.</p> <p>A qualified property should first be offered for sale through the PFS program. A lender who elects to accept a DIL without attempting a PFS must receive prior RHS approval.</p> <p>Under no circumstances shall a DIL be available to a borrower who has abandoned the mortgage obligation despite the continued ability to pay.</p>
B. Borrower Qualifications	<p>The DIL option may be extended to a borrower who is unable to continue to support the mortgage debt and who occupies the property as a primary residence.</p> <p>A lender who receives prior approval from RHS may offer a deed-in-lieu to a non-occupant borrower when it verifies that the need to vacate was related to the cause of the default (job loss, mandatory job transfer, divorce, death), and the subject property was not purchased as a rental investment, or used as a rental for more than 12 months.</p> <p>A DIL may not be considered if a deficiency judgment will be pursued against the borrower.</p>
C. Financial Analysis	<p>The lender determines the borrower's financial condition. The lender projects the borrower's surplus monthly income for a minimum of three months and uses good business judgment to determine if the borrower has the capacity to support the mortgage debt.</p>
D. Condition of Title	<p>The lender obtains a complete title search and is able to obtain good and marketable title to the property.</p>

**USDA Rural Housing Service Loss Mitigation
Deed in Lieu of Foreclosure**

E. Documentation	<p>A written DIL agreement is executed by the mortgagor and lender and contains all of the conditions under which the deed will be accepted, such as:</p> <ul style="list-style-type: none"> • certification that the borrower does not own any other property subject to a mortgage • specific transfer date • notification that there may be income tax consequences as a result of the DIL • acknowledgment that borrowers who comply with all of the requirements of the agreement shall not be pursued for deficiency judgments • a statement describing the general physical condition in which the property will be conveyed • agreement that the borrower will convey the property vacant and free of personal property unless the lender has approved occupied conveyance • itemization of the keys, built-in fixtures and equipment to be delivered to the lender on or before the transfer date • borrower's agreement to provide evidence that certain utilities, assessments and homeowner's association dues are paid in full to the transfer date unless otherwise agreed to by the parties <p>The lender is responsible for ensuring that the deed-in-lieu documentation is in compliance with all applicable laws and regulations</p>
F. Conveyance	<p>A special warranty deed is used to convey the property. The original credit instrument is canceled and surrendered to the borrower, indicating that the debt has been satisfied. The lender records the satisfaction of lien and the deed.</p>
G. Timing	<p>A DIL is completed or foreclosure initiated within 6 months of the date of default unless the lender obtained an extension by first trying another loss mitigation option or has received an extension approved by RHS before the 6-month period expires.</p> <p>If the DIL follows a failed special forbearance agreement or pre-foreclosure sale, the DIL should be completed or foreclosure initiated within 90 days of the failure. If the DIL follows any other option, it is completed or foreclosure initiated within 9 months of the date of default.</p>
H. Lender Reporting	<p>The DIL is reported to credit bureaus. The lender also files Form 1099-A with the IRS, and reports any discharge of indebtedness in accordance with the Internal Revenue Code.</p>
I. Borrower Consideration	<p>A borrower who successfully conveys the property securing the loan with a deed-in-lieu of foreclosure is relieved of his debt. The borrower shall not be pursued for deficiency judgments by either the lender or RHS.</p>

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Deed in Lieu of Foreclosure**

J. Filing the Claim	As with other loss claims, the lender is expected to follow established claim instructions. RHS will reimburse the lender for reasonable and customary costs of the appraisal, title search, allowable legal fees, and reasonable costs of preservation and protection. Disbursements for taxes, assessments, hazard insurance, and other allowable items payable before the REO settlement date are also reimbursable. RHS will not pay costs related to the property that are incurred after the REO settlement date.
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APPENDICES

Appendix 1	RHS Servicing Plan (<u>Required</u>)
Appendix 2	Special Forbearance Checklist (<i>Optional</i>)
Appendix 3	Modification Checklist (<i>Optional</i>)
Appendix 4	Pre-foreclosure Sale Checklist (<i>Optional</i>)
Appendix 5	Deed-In-Lieu of Foreclosure Checklist (<i>Optional</i>)

Appendix 1

RHS Loan Servicing Plan

Part A. Lender Information			
Servicer/ Holder:		Preparer:	Date:
Address:		Phone No.:	Fax No.:
City:		State:	Zip Code:
Part B. Loan Information			
Borrower:		Co-Borrower:	Lender Loan No.:
Borrower SSN:		Co-Borrower SSN:	Loan Origination Date:
DDLPI:	UPB: \$	Mo. Payment: \$	Total PITI Arrearage \$
Part C. Property Information			
Street Address:			
City:		State:	Zip Code:
Property Condition:	<input type="checkbox"/> Good	<input type="checkbox"/> Fair	<input type="checkbox"/> Poor
Occupancy Status:	<input type="checkbox"/> Owner Occupied	<input type="checkbox"/> Tenant Occupied	<input type="checkbox"/> Vacant
Is the Property Listed for Sale ?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
List Price: \$	Days on Market:	Real Estate Agent:	Agent's Phone No.:
Part D. Financial Information			
Reason for Default:			
Monthly Net Income: \$	Monthly Expenses: \$	Mo. Surplus Income: \$	Liquid Assets: \$
Comments:			
(Continue on reverse if necessary)			
Part E. Property Valuation			
Valuation Date:	<input type="checkbox"/> Inspection	<input type="checkbox"/> Appraisal	<input type="checkbox"/> BPO
As Is Value: \$	As Repaired Value: \$	Estimated Cost of Repairs: \$	
Part F. Workout Recommendation			
Special <input type="checkbox"/> Forbearance	<input type="checkbox"/> Modification	<input type="checkbox"/> Pre-Foreclosure Sale	<input type="checkbox"/> Deed-In-Lieu
Outstanding Fees: \$	Capitalized Amount : \$	List Price \$	Foreclosure Initiation Date:
Total Arrearage Amt: \$	New Mo Payment:: \$	List Date:	Est. Foreclosure Sale Date:
Agreement Term (mos.):	Old Interest Rate: New Interest Rate:	Marketing Period (days):	Fees & Costs to Date: \$
Mo. Pmt Amount: \$	Maturity Date:	Commission %:	
	Junior Lien Amount: \$	MLS Listing (Y/N)?:	
	Foreclosure Status:	Borrower Contribution: \$	
	Income/Expense Ratio:		

Appendix 2

SPECIAL FORBEARANCE CHECKLIST

Loan Number:	Borrower:	Date:
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Issue	Verification (Date, Amount, Source of Information etc.)
Has the borrower experienced a verified loss of income or increase in living expenses?	
Is the borrower an owner-occupant?	
Did the borrower receive the <u>How To Avoid Foreclosure</u> brochure?	
Will the loan be more than 90 and less than 365 days delinquent on the effective date of the agreement? (Show number of days)	
Did the surplus income analysis to determine the borrower's ability to repay the debt include:	
a financial statement provided by the borrower?	
a credit report?	
income/expense verifications?	
evidence the borrower can support the payment schedule?	
Show the borrower's surplus income percentage.	
Has an inspection determined that the property has no adverse conditions affecting continued occupancy?	
Does the written agreement executed by the borrower:	
clearly define the terms and frequency of repayment?	
offer relief not available through a normal repayment plan?	
state that failure to comply may result in foreclosure?	
limit the total default to 12 months or less?	
If the special forbearance agreement culminates in a modification, show the proposed date of that action.	

Appendix 3
LOAN MODIFICATION CHECKLIST

Loan Number:	Borrower:	Date:
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Issue	Verification (Date, Amount, Source of Information etc.)
Has the borrower experienced a verified loss of income or increase in living expenses?	
Does the borrower have a commitment to continue to occupy the property as his or her primary residence?	
Did the borrower receive the How To Avoid Foreclosure brochure?	
Will the loan be more than 90 days delinquent on the date of execution and funding? (Show number of days.)	
If this loan had a prior modification within the past three years, justify the decision to modify now.	
Did the surplus income analysis to determine the borrower's ability to repay the debt include: a financial statement provided by the borrower? a credit report? income/expense verifications? evidence of the borrower's ability to pay for at least 3 months?	
What is the borrower's surplus income percentage?	
Reason why the default cannot be cured through special forbearance?	
Has a title search established first lien status of the modified loan? Will release of junior liens be required? Will title endorsement be required?	
Has an inspection determined that the property has no adverse conditions affecting continued occupancy?	
Does the written modification agreement executed by the borrower: include all advances necessary to cure the delinquency of the principal, interest, taxes and insurance? exclude all legal and administrative costs?	

Appendix 4**PRE-FORECLOSURE SALE CHECKLIST**

Loan Number:	Borrower:	Date:
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Issue	Verification (Date, Amount, Source of Information etc.)
Has the borrower experienced an involuntary reduction in income or increase in living expenses?	
Does the borrower occupy the property as his or her primary residence? If not, explain.	
Will the loan be at least 30 days delinquent when the PFS closes? (Show number of days.)	
Does an appraisal completed within the past 6 months show that:	
the AS-IS value is less than the loan amount ? (show Value)	
the property is worth at least 63% of the unpaid principal balance? (show negative equity ratio)	
sale proceeds will result in a loss of more than \$1,000	
the property is not seriously damaged?	
Has a title search been obtained indicating marketable title?	
Did the surplus income analysis to determine the borrower's inability to repay the debt include:	
a financial statement provided by the borrower?	
a credit report?	
income/expense verifications?	
the borrower's surplus income percentage? (Show percentage.)	
The PFS agreement, executed by the borrower shows:	
the end date for marketing is?	
minimum acceptable net proceeds are?	
Do Net Sale Proceeds equal or exceed 82 percent of As-Is Value? (Show percentage)	

Appendix 5**DEED-IN-LIEU OF FORECLOSURE CHECKLIST**

Loan Number:	Borrower:	Date:
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Issue	Verification (Date, Amount, Source of Information etc.)
Has the borrower experienced a verified loss of income or an unusually large and unforeseen increase in living expenses?	
Does the borrower occupy the property as his or her primary residence? If not, explain.	
Will the loan be at least 30 days delinquent when the special warranty deed is accepted?	
Did the borrower receive the HUD brochure, <u>How To Avoid Foreclosure?</u>	
A recent appraisal or BPO indicates the AS IS property value as?	
If any portion of the property is rented has there been an approved occupied conveyance?	
Has a title search been obtained showing good and marketable title?	
Does the surplus income analysis used to determine the borrower's inability to repay the debt include:	
a financial statement provided by the borrower?	
credit report?	
income/expense verifications?	
the borrower's surplus income? (show dollars and percentage)	Surplus \$ _____ %
Does a written DIL agreement, executed by the borrower:	
require the property to be vacant and free of personal property at conveyance?	
convey clear title free of junior liens?	
require the borrower to pay utility bills to the date of conveyance?	
require the borrower to pay Homeowner's Association dues or other assessments?	
advise the borrower to obtain the advice of a tax consultant?	